In the High Court of Judicature at Madras

Dated:22.09.2006

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S. TAMILVANAN

Writ Petition No.6187 of 2002

and WPMP.No.26547 of 2003

S.Karunanidhi .. Petitioner

vs.

1. The Deputy Commandant
   CISF 6th RB(A)
   Suraksha Campus
   Vellore (Tamil Nadu) 631 152.

2. The Commandant
   CISF 6th RB (A)
   Suraksha Campus
   Vellore (Tamil Nadu) 631 152. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records relating to the Appellate Order dated 12.2.02 passed by the 2nd respondent herein in No.V-1014/6RB/Appeal/SK/2002/1250 confirming the final order no.V-15015/6RB/Disc/Min/SK/2001-8813 dated 20.12.2001 passed by the I respondent herein and quash the same as stated therein.

For petitioners : Mr.M.Md.Ibrahim Ali
For respondents : Mr.E.R.K.Moorthy

ORDER

(Order of the Court was made by P.SATHASIVAM,J.)

Aggrieved by the orders of the respondents dated 20.12.2001 and 12.02.2002, the petitioner has filed the above writ petition.

2. Heard the learned counsel for the petitioner as well as respondents.

3. The charge levelled against the petitioner reads as under.

> "Indiscipline and dereliction of duty in that No.851290203 HC/Dvr.S.NLC, Neyveli had given different statements, to suppress the fact on 2.5.2001 and 23.7.2001 respectively during P.E. and D.E. against Constable M. Rajendran of CISF unit, NLC, Neyveli, by changing his first statement as eye witness given on 22.4.2001,

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immediately after the incident of assault in which Const.M. Rajendran had assaulted SI/Exe..V.K. Krishnan of CISF Unit, NLC, Neyveli. Hence, the charge."

4. It is the case of the petitioner submitted that the entire article of charge framed against the petitioner is based on the incident that happened on 21.04.2001, in which constable M. Rajendran of CISF Unit,NLC, Neiyveli allegedly misbehaved with SI.Executive Krishnan. It is further stated that the said Rajendran was removed from service by the Commandant, NLC, Neyveli by his order dated 29.08.2001. On appeal by the said constable Rajendran, the DIG, CISF, Chennai has reinstated him into service by setting aside the order passed by the Commandant, NLC, Neyveli and ordered a de novo enquiry. In such circumstances, it is therefore stated that the article of charge framed against the petitioner under Rule 35 for having given two different statements in the enquiry proceedings relating to Rajendran should have been kept in abeyance, however, the respondents passed orders withholding the increment for one year; hence the writ petition. It is also the claim of the petitioner that at the initial stage, under compulsion and due to pressure, he made such statement and in the regular enquiry he retracted the earlier statement, for which no action could be taken under the Rules. Even otherwise, it is contended, the punishment imposed is highly excessive.

5. We have gone through the charge levelled against the petitioner. On the basis that the petitioner has made a different statement from that of his first statement as eye- witness given on 22.04.2001, in our considered view, under the Service Rules there cannot be any action against the petitioner. The Department could have confronted the petitioner with the reasons which made him to change his first statement in the cross examination. Instead of resorting such a recourse, the second respondent has filed a charge memo and ultimately awarded penalty of withholding next increment for one year not having the effect of postponing his future increments, which has been mechanically approved by the authority/2nd respondent herein. Hence, we hold that both the orders cannot be sustained.

Under these circumstances, the impugned orders dated 20.12.2001 and 12.02.2002 are set aside and the writ petition is allowed. No costs.

kh

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

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To

1. The Deputy Commandant
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   Vellore (Tamil Nadu) 631 152.

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   Suraksha Campus
   Vellore (Tamil Nadu) 631 152.

+ one cc to Mr.E.R.K.Moorthy, Advocate Sr.No.44570.

AVA (CO)
RSM/16.10.2006

W.P.No.6187/02

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